Single Bench

(3)

BEFORE THE HIGH COURT OF CHHATTISGARN AT BILASPUR

WP- 4764 /2004(SB)
Other Matters

PETITIONER DEFANDENT : M/o S.C.A. Chemical India Ltd. Through Director Shashank Rastogi aged about 36 Years s/o late Shri Y.P. Rastogi, 28, Industrial Area, Tedesra, Distt- Rajnandgaon (CG).

VERSUS

RESPONDENTS PLAINTIFFS :
1. M/s Utkal Hydrocarbon, Bhilai (partnership firm) 16, Light Industrial Area, Po.-Industrial estate Bhilai, Distt- Durg (CG).
2. Pankaj porwal, aged about 26 years S/o Danmal Porwal.
3. Smt. Shobha Porwal aged about 52 years w/o Danmal Porwal both partners of Utkal Hydrocarbon, Bhilai both r/o 2/11, Nehru Nagar (East), Po- Nehru Nagar, Bhilai, Distt- Durg, Chhattisgarh.
4. Hemant Kumar Shah aged about 52 years s/o Ranjit Shah, R/o H1G-52, Padmanabhpur, Po. & Distt- Durg (cg)
5. III Civil Judge, Class-1, District Court, Po. & Distt- Durg (cg).

R.R. No. 4759/04
Presented by Shri KU. Amita Kher
dated 06-12-04

Petition under Article 226/227 of the constitution of India – For issuance of a writ of certiorari & mandamus and any other writ/direction/order.

(32)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 4764/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

23/3/2005

Smt. Meera Jaiswal with Shri A. Shukla and Shri Somkant Verma, counsel for the petitioner.

Shri Ashish Shrivastava for respondents no.1 to 3.

Heard.

The defendant/petitioner has filed this petition against the order dated 16/9/2004 whereby the application filed by it under Order 9 Rule 7 CPC has been rejected.

Briefly stated the facts are that the matter was fixed for evidence of the plaintiff on 27/2/2004. On that date, neither the defendant nor its counsel was present. The case was proceeded ex parte and the next date fixed for evidence was 5/4/2004. On that date, the Presiding Officer was on leave and the case was adjourned to 23/4/2004. On 23/4/2004, the application under Order 9 Rule 7 CPC was filed by the defendant.

Learned counsel for the defendant/petitioner submitted that the counsel to whom the brief was entrusted was not well and he could not appear in the Court. They pray for setting aside the order impugned. It is stated that the party should not suffer because of the mistake of the counsel. Reliance is placed upon the judgment of the Apex Court in the case of ***Rafiq and another vs. Munshilal*** reported in ***AIR 1981 SC 1400***.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned counsel for respondents no.1 to 3 opposed the prayer on the ground that no good cause has been shown by the defendant for its absence.

This Court has gone through the record. The case was fixed for evidence of the plaintiff on 27/2/2004. On that date, neither the defendant nor its counsel was present. The Court proceeded ex parte and the case was adjourned for hearing on 5-4-2004. On that date, the Presiding Officer was on leave and the case was adjourned to 23/4/2004. On 23/4/2004 the application under Order 9 Rule 7 of the Code of Civil Procedure was filed by the defendant. The explanation is that the senior counsel Shri R.K. Rastogi was not well and he had instructed his junior Shri Pramod Singh to appear before the Court but he could not appear when the case was called at 4.00 p.m. However, at the end of the day at about 5.00 p.m., he noted the next date of hearing. In para 7 of the application, the counsel in fact stated that henceforth such lapse would not occur. This was supported by affidavit of the counsel. Party should not suffer because of the mistake of the counsel.

In view of the application, the affidavit of the counsel and the facts mentioned therein, this Court is satisfied that non-appearance of the counsel was not willful and there was

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP- 4764 **सन्** 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

good cause shown. Even otherwise, the party should not suffer as party has taken all the precautions.

Having considered the facts and circumstances of the case, the material on record and in view of the settled principle of law laid down by the Apex Court in the case of ***Rafiq & Another*** (supra) that the party should not suffer because of the mistake of the counsel, the impugned order dated 16/9/2004 is set aside.

The petition is allowed subject to payment of costs of Rs.500/- (Rs. Five Hundred Only) to be paid to the respondents/plaintiffs. Costs be deposited as early as possible preferably within a period of fifteen days.

At this stage, learned counsel for the respondents/ plaintiffs submitted that there is a delay in trial.

Having considered, hearing of the case is expedited. Let it be completed as early as early as possible preferably within three months from the date of production of the copy of this order before the court below.

C.C.

Sd/-
Fakhruddin
Judge

H/Gowri